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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,808	06/27/2003	Sheldon Plutsky	57210-5023	6272

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,808

Applicant(s)

PLUTSKY, SHELDON

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-29 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

This final Office action is in response to the amendment of May 20, 2004 by which claims 21 and 30 were amended.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the length of the substantially horizontally oriented member that is horizontally perpendicular to the substantially vertically oriented surface, as in claim 21, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is rendered indefinite since the recitation "a length of said substantially horizontally oriented member is horizontally perpendicular to said substantially vertically oriented surface" (see lines 3-6 of section (b)) appears to be inaccurate and/or misdescriptive. *In particular*, the drawings do not show the elements "horizontally perpendicular" but rather the substantially horizontally oriented member is shown, and disclosed, as being at a "non-right angle", i.e., not "perpendicular". *Accordingly*, claim 24 is also rendered indefinite since the language of claim 24 contradicts this recitation in claim 21.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112, as advanced above), claims 21-23, 25, 27-29, and 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,082,125 (Ninni '125).

Ninni '125 is considered to disclose the subject matter capable of performing the method steps of: providing a display rack comprising a substantially horizontally oriented member (40) having first (right side of Figure 1) and second (left side of Figure 1) opposite ends and a substantially planar upper surface (31) and the member comprising first and second elongated members (36) that are spaced apart and substantially parallel; the member further comprising a

Art Unit: 3634

first member (unnumbered - U-shaped wires) having a generally round cross section and a second member (31) having a planar surface; a securing portion (at 34) associated with the second end which includes means, i.e., peg hooks, for removably securing the rack to a substantially vertically oriented surface having openings therein; placing a product on the rack so that the product substantially entirely rests upon the upper surface (of 31); and contacting a slidable carriage (10) with the product engaging the horizontally oriented member whereby the carriage is movable (see 10, i.e., arrow, in Figure 1) towards and away from the vertically oriented surface and the carriage including engagement members (unnumbered - C-shaped elements connected to ends of 20) adapted to engage the member (40); the carriage (10) comprising a middle portion (at 20) extending between and above the first and second elongated members (36) and the members (C-shaped elements) slidable engaging the members (36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ninni '125, alone.

Ninni '125 teaches the structure of a rack and method steps as advanced above.

The claim differs from Ninni '125 in requiring the products to be photo albums.

Although Ninni '125 does not disclose photo albums being stored in the rack, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed photo albums in the rack thereby increasing storage capabilities of the rack.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21, 22, and 24-26 (method) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4-6 (method), respectively, of U.S. Patent No. 6,612,448. Also, claim 21 (method) is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16 (method) of U.S. Patent No. 6,612,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the carriage of claim 21 be oriented horizontally perpendicular to the substantially oriented surface, thereby increasing securement of products placed therein while increasing ease in use to the consumer since the products can be removed therefrom with greater ease.

Allowable Subject Matter

Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to show or suggest a method for displaying products, as called for in claim 21, whereby the second ends of the substantially horizontally oriented member are turned up at a non-right angle, as specifically called for in the claimed combination of claim 30. Although the prior art of record shows second ends that are turned up at a non-right angle (see U.S. Patent No. 4,813,535), there is no motivation to make the second ends of the horizontally extending member in Ninni '125 turned up at a non-right angle, since the element 36 (near the wall) is a necessary element of the assembly of Ninni '125, and there is no motivation in the prior art to have an element, such as 36, attached to ends that are upturned at a non-right angle, especially since the second ends of the horizontally extending member do not comprise the securing portion, as called for in claim 21 (see lines 4-6 of section (a)).

Response to Arguments

Applicant's arguments, with respect to the Ninni reference, filed May 20, 2004 have been fully considered but they are not persuasive. In view of the rejection under 35 USC § 112 advanced above, Ninni '125 is still considered to meet the limitations of the claims. In particular, it is noted that since elements 12 and 14 of the instant invention are defined as the substantially horizontally oriented members, it is unclear how these members are "horizontally perpendicular"

Art Unit: 3634

to the vertical surface, when the drawings show and the specification states that the members are disposed at a "non-right angle". Also, applicant's arguments (in the paragraph bridging pages 10 and 11 and the first paragraph on page 11) are considered to be more limiting than what is actually being claimed, since the claims do not recite or require a link between the width of an item and the rack.

Applicant's arguments, with respect to the Eklof *et al.* reference, filed on May 20, 2004, are persuasive, especially in view of the amendment to claim 21, and thus the rejections of claims 21, 22, 25, 27, 29, 31, 33, and 34 under Section 102 and claim 30 under Section 103, have been withdrawn.

Applicant's arguments (see page 14), concerning the obviousness-type double patenting rejection, are acknowledged. It is noted that the obviousness-type double patenting rejection, advanced above, is drawn to claims 1, 2, 4-6, and 16 of U.S. Patent 6,612,448. *However*, in view of applicant's amendment the obviousness-type double patenting rejection has been changed from the previous Office action.

Conclusion

Applicant's amendment necessitated the new grounds (under obviousness-type double patenting) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3634

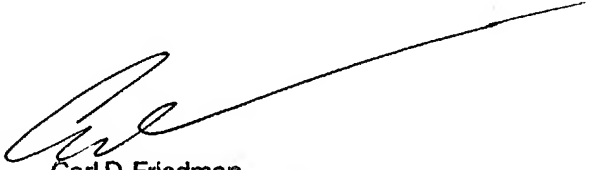
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer E. Novosad/jen
July 9, 2004



Carl D. Friedman
Supervisory Patent Examiner
Group 3600